SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2004-000220-001 DT 10/25/2004

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED:_____

BROWN & BROWN NISSAN

BARTLET A BREBNER

v.

JOHN A FIORAMONTI (001)

JOHN A FIORAMONTI
6336 N ORACLE RD #326
PMB #368
TUCSON AZ 85704

CHANDLER JUSTICE COURT
REMAND DESK-LCA-CCC

RECORD APPEAL RULE / REMAND

This Court has jurisdiction of this civil appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement and I have considered and reviewed the record of the proceedings from the trial court, exhibits made of record and the memoranda submitted.

Facts

On June 28, 2002, Appellant, John Fioramonti, entered into an automotive purchase contract with Appellee, Brown and Brown Nissan, for the purchase of a 1999 Nissan Pathfinder. The terms on the transaction included Appellant's trade-in vehicle, a 1999 Honda Civic. In the "pay-off amount" portion of the sales agreement, Appellee entered an estimate - $7,500.00 - for Appellant's trade-in vehicle. Appellee presented Appellant with the Retail Sales Transaction Disclaimer and Release Form, which Appellant signed. Section 6 of the Retail Sales Transaction Disclaimer and Release Form states:

> PAYOFF: The estimated and approximated payoff amount of $7,500.00 is being included on the purchase contract to be applied toward the payoff of the existing contract on the

> traded vehicle. The exact payoff amount may be in fact **"higher or lower."** If the actual payoff is **"higher", you, the customer, will pay** Brown and Brown Nissan- Tempe the difference between the above estimate and approximation and the actual payoff upon approval of the new loan by a lending institution. If the actual payoff is **"lower", you, the customer, will be credited** by the lending institution to which the payoff is made the difference between the above estimate and approximation and the actual payoff within (45) forty five days upon approval of the new loan by the lending institution to which the payoff is made. By initialing below, I/we the customer, understand and acknowledge that this is a binding and legal contract and that any collection fees, court costs or related attorney fees incurred due to nonpayment will be paid by me/us.

When Appellee received the actual payoff amount for Appellant's 1999 Honda Civic, it was $1,973.76 higher than estimated. Appellee paid off the lien to Honda, and Appellant's have yet to pay Appellee the $1,973.76 difference, as required by the purchase contract. On November 27, 2002, Appellee filed a breach of contract action. On April 28, 2003, Appellee filed a Motion for Summary Judgment, which the Chandler Justice Court granted on July 3, 2003, after hearing oral arguments and reviewing the evidence. On August 4, 2003, the Chandler Justice Court issued a judgment against Appellant for $4,175.36.[1] Appellant now brings the matter before this court.

Issue & Analysis

The only relevant issue before this court is whether the Chandler Justice Court erred when it granted Appellee's Motion for Summary Judgment. In reviewing the granting of a motion for summary judgment, a reviewing court must view the evidence in a light most favorable to the party against whom the motion was granted, and give such party the benefit of all favorable inferences that may reasonably be drawn therefrom.[2] Further, when the party moving for a summary judgment has made a prima facie showing that no genuine issues exist for trial, the opponent of the motion has the burden to produce sufficient evidence to show that there is an issue, and the opposing party cannot defeat a motion for summary judgment and require a

[1] $1,973.76 principle, plus $131.60 for accrued costs through the date of the judgment, plus $2,070.00 for attorney's fees.

[2] *Brown Wholesale Elec. Co. v. Safeco Ins. Co. of America*, 135 Ariz. 154, 157, 659 P.2d 1299, 1302 (App. 1982).

trial by an unsupported contention that an issue of fact exists; the party must show that evidence is available which would justify a trial of the issue.[3]

After a careful examination of the record, I find substantial competent evidence to support the action of the lower court. I find no genuine issues of material fact requiring a trial. Appellant initialed the most crucial and most relevant portion of the Retail Sales Transaction Disclaimer and Release Form, thereby acknowledging that the $7,500.00 payoff amount was merely an estimate and approximation of the actual payoff amount. Appellant argues that Appellee never informed Appellant that the amount was only an estimate. Appellant was informed in writing that the figure was an estimate, as indicated by Appellant's initials on that particular provision of the Retail Sales Transaction Disclaimer and Release Form. Appellant further asserts that he only initialed the Retail Sales Transaction Disclaimer and Release Form "in order to get away from the dealership after wasting over 3 hours there."[4] Impatience is not recognized in Arizona courts as a defense to an otherwise binding contract.

IT IS THEREFORE ORDERED affirming the decision and judgment of the Chandler Justice Court.

IT IS FURTHER ORDERED remanding this matter back to the Chandler Justice Court for all further, if any, and future proceedings with the exception of attorneys fees and costs incurred in this appeal.

IT IS FURTHER ORDERED that counsel for the Appellee shall submit its application for attorneys fees and costs with a form of order including those fees and costs and consistent with this minute entry opinion, and lodge the same no later than December 10, 2004.

[3] *Dobson v. Grand Intern. Broth. of Locomotive Engineers*, 101 Ariz. 501, 505, 421 P.2d 520, 524 (1966)
[4] Appellant's Memorandum, p. 4, ll. 3-4.